

KENTUCKY BOARD OF NURSING  
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**SUMMARY REPORT OF KENTUCKY BOARD OF NURSING  
ADVISORY OPINIONS ON NURSING PRACTICE ISSUES**

**July 1, 2005 – June 30, 2006**

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P. Pabon, JD, KBN Prosecuting Attorney. (See the last page of this report for a copy of this article)

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- AOS #34 entitled, "Roles of Nurses in Maintaining Confidentiality of Patient Information"

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The primary mission and purpose of the Board is to enforce public policy related to the safe and effective practice of nursing in the interest of public welfare. As a regulatory agency of state government, the Board of Nursing accomplishes this mission as authorized by Kentucky Revised Statutes (KRS) Chapter 314—The *KENTUCKY NURSING LAWS* and attendant administrative regulations. In accomplishing one aspect of the mission, the Board of Nursing issues advisory opinions on what constitutes the legal scope of nursing practice.

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An opinion is not a regulation of the Board; it does not have the force and effect of law. Rather, an opinion is issued as a guidepost to licensees who wish to engage in safe nursing practice.

KRS 314.011(6) defines "registered nursing practice" as:

...The performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

- a) The care, counsel, and health teaching of the ill, injured or infirm.
- b) The maintenance of health or prevention of illness of others.
- c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include, but are not limited to:
  1. Preparing and giving medication in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
  2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
  3. Intervening when emergency care is required as a result of drug therapy;
  4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
  5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
  6. Instructing an individual regarding medications.
- d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care.
- e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses.

KRS 314.011(10) defines "licensed practical nursing practice" as:

...The performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

- a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist.
- b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board.
- c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.
- d) Teaching, supervising, and delegating except as limited by the board.
- e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Licensed Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses.

KRS 314.021(2) states:

All individuals licensed under provisions of this chapter shall be responsible and accountable for making decisions that are based upon the individuals' educational preparation and experience in nursing and shall practice nursing with reasonable skill and safety.

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KRS 314.021(2) imposes individual responsibility upon a nurse to undertake the performance of acts for which the nurse is educationally prepared and clinically competent to perform in a safe, effective manner. This section holds nurses individually responsible and accountable for rendering safe, effective nursing care to clients and for judgments exercised and actions taken in the course of providing care.

Acts that are within the permissible scope of practice for a given licensure level may be performed only by those licensees who personally possess the education and experience to perform those acts safely and competently. A nurse/licensee who doubts his/her personal competency to perform a requested act has an affirmative obligation to refuse to perform the act, and to inform his/her supervisor and the physician prescribing the act, if applicable, of his/her decision not to perform the act.

If a licensee accepts an assignment that the licensee believes is unsafe or for which the licensee is not educationally prepared, then the licensee also assumes the potential liability, which may occur as a result of the assignment. Others may equally or concurrently be responsible, accountable, and liable for a licensee's actions.

Practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

The Board has published "Scope of Practice Determination Guidelines" as a decision making model for an individual licensee to use in determining whether the performance of a specific act is within the scope of practice for which the individual is educationally prepared, clinically competent and licensed to perform. Individuals are encouraged to utilize the "Guidelines" in making decisions as to whether he/she should or should not perform a particular act. A copy may be obtained from the Board office, or from the Board's website at <http://kbn.ky.gov>.

The responsibilities which any nurse can safely accept are determined by the variables in each nursing practice setting. These variables include:

1. The nurse's own qualifications including:
  - a. basic prelicensure educational preparation;
  - b. knowledge and skills subsequently acquired through continuing education and practice; and
  - c. current clinical competence.
2. The "standard of care" which would be provided in similar circumstances by reasonable and prudent nurses who have similar training and experience.
3. The complexity and frequency of nursing care needed by a given client population.
4. The proximity of clients to personnel.
5. The qualifications and number of staff.
6. The accessible resources.
7. The established policies, procedures, standards of practice, and channels of communication which lend support to the types of nursing services offered.

To date, the Board has published thirty-four (34) advisory opinion statements, as listed on the "Kentucky Board of Nursing Publications" form and on the Board's website at <http://kbn.ky.gov>.

Advisory opinion statements are developed and published when:

1. Multiple inquiries are received regarding a specific nursing procedure or act;
2. The Practice Committee determines that a specific nursing procedure or act has general applicability to nursing practice and warrants the development of an opinion statement; or
3. The Board directs that an opinion statement be developed.

When studying issues, the Board reviews and considers applicable standards of practice statements published by professional nursing organizations; the educational preparation of both registered and licensed practical nurses as provided in the prelicensure nursing education programs in the Commonwealth; and, when applicable, the organized post-basic educational programs for advanced registered nurse practitioners. The Board also gathers information regarding practice issues from nurses in relevant practice settings (including staff nurses, supervisors, nurse faculty members, etc.) and/or representatives from state nursing associations in the Commonwealth, among others. Further, the Board reviews applicable opinions issued by the Office of the Attorney General.

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In addition to the thirty-four (34) advisory opinion statements published as of June 30, 2005, the Board has issued from July 1, 2005 to June 30, 2006, individual advisory opinions in response to inquiries on specific nursing practice situations, summarized as follows:

**1. Role of the Registered Nurse in Assigning Medicare Patient Hospital Admission Status**

December 2005 – The Board advised that it is within the scope of registered nursing practice, for the registered nurse who is educationally prepared and clinically competent in utilization review and case management, to determine appropriate patient admission status (observation or inpatient admission) to assure or effect correct Medicare (Centers for Medicare and Medicare Services) financial coverage decisions using a facility approved protocol.

**2. Role of Licensed Practical Nurse in Initial Nursing Assessment of Patients in a Wound and Hyperbaric Outpatient Department**

December 2005 – It was the advisory opinion of the Board that it is within the scope of licensed practical nursing practice, for the licensed practical nurse who is educationally prepared and clinically competent, to perform assessments under the supervision of a physician or registered nurse by completing the initial assessment forms utilized by this outpatient department.

**3. Roles of Nurses in Businesses Offering Complementary/Alternative or Holistic Practices (Raindrop Therapy and in a Holistic Retail Store)**

A. December 2005 – The Board was requested to issue an opinion on the performance of “Raindrop Technique” therapy by a licensed practical nurse. Following discussion of the questions posed, information provided, and statutes governing nursing practice, it was the advisory opinion of the Board that the performance of massage techniques using oils for promotion of relaxation is within the scope of licensed practical nursing practice for the licensed practical nurse who is educationally prepared and clinically competent in the procedures.

The *Kentucky Nursing Laws* (KRS Chapter 314) do not prohibit a nurse from operating a retail enterprise. The nurse is accountable and responsible for utilizing his/her nursing knowledge, judgment and skill, and providing health-related practices with reasonable skill and safety. The nurse in providing complimentary, alternative or holistic practices is responsible and accountable for assuring that the client or legal guardian is provided with sufficient information about the proposed modalities in order for the client to give informed consent as needed.

It should be assured that scientifically valid data exists which supports the validity and efficacy of the practices. Nurses are cautioned regarding making health related claims that are not scientifically based or supported by reliable and valid research. Nurses should rely upon research findings that are based on studies that include data collection, analysis and interpretation, and use a sound research design and not based solely on anecdotal and personal experiences and opinions of individuals. Nurses may wish to seek advice from nurse researchers in interpreting the usefulness and scientific reliability of published information.

Caution should be taken in how the information is presented to the public regarding the purposes and uses of oils/substances you use. KRS Chapter 367, *The Kentucky Consumer Protection Act*, prohibits the making of commercial claims that are fraudulent or deceptive.

B. December 2005 – A letter requested an opinion on the role of the registered nurse in establishing a business operating a holistic retail store offering complementary, alternative, and/or holistic practices. Various questions were asked including the following:

- 1) Is it within the scope of practice for a registered nurse in Kentucky to educate clients on the risks, dangers, hazards or benefits, if any, of complimentary therapies a client may be using, if such hazards are scientifically proven and known to the RN—for example, in *Moby's Nursing Drug Handbook* 2005 that covers herbal monographs and prints herb-drug interactions a retail patron/consumer could be using while trying to purchase herbal products?

- 2) A client in a hospital informs an RN they combine ginkgo (blood-thinner) with their aspirin regimen. Would an RN have a duty to inform the patient about potential cumulative blood-thinning actions and suggest contacting the prescriber of the medical aspirin?
- 3) Is “counseling and health teaching” an independent RN function?
- 4) Could an RN supplement/cosmetic retailer supply educational literature and not be practicing as an RN? Can an RN turn the license “off and on”?

Following discussion of the questions posed and the statutes governing nursing practice, it was the advisory opinion of the Board that the *Kentucky Nursing Laws* (KRS Chapter 314) do not prohibit a nurse from operating a retail enterprise. The nurse is accountable and responsible for utilizing his/her nursing knowledge, judgment and skill, and providing health related practices with reasonable skill and safety. The nurse in providing complimentary, alternative or holistic practices is responsible and accountable for assuring that the client or legal guardian is provided with sufficient information about the proposed modalities in order for the client to give informed consent as needed.

It should be assured that scientifically valid data exists which supports the validity and efficacy of the practices. Nurses are cautioned regarding making health-related claims that are not scientifically based or supported by reliable and valid research. Nurses should rely upon research findings that are based on studies that include data collection, analysis and interpretation, and use a sound research design and not based solely on anecdotal and personal experiences and opinions of individuals. Nurses may wish to seek advice from nurse researchers in interpreting the usefulness and scientific reliability of published information.

In response to the specific questions listed above, yes to questions 1, 2 and 3. In addition, if a nurse is practicing in a health care facility, then the nurse should practice according to established facility policies and procedures. In response to question 4, the Board advised that a nurse, holding a current active license in Kentucky, is accountable for his/her nursing practice. Legal counsel should address the additional questions related to clients signing waivers.

#### **4. Delegation to Unlicensed Assistive Personnel: Spiking IV Fluids**

December 2005 – An opinion was requested on the delegation “...to the certified nursing assistant the performance of spiking plain intravenous (IV) fluids for the purpose of setting up a room to receive a patient from surgery/etc. The registered nurse staff member would be attaching the fluids to the patient upon arrival to the unit.”

As a guideline to nurses, the Board has issued Advisory Opinion Statement (AOS #15) entitled *Roles of Nurses in the Supervision and Delegation of Nursing Acts to Unlicensed Personnel*, and promulgated Kentucky Administrative Regulation 201 KAR 20:400 that governs the delegation of nursing tasks. Following review of this question, and the statutes and administrative regulations governing nursing practice, it was the advisory opinion of the Board that a nurse should not delegate the spiking of IV fluids to a certified nursing assistant.

#### **5. Role of the Licensed Practical Nurse in Intravenous Therapy Practice: CAD Pump and PCA Bolus**

February 2006 – An opinion was requested on the role of the licensed practical nurse in intravenous therapy practice. Specifically:

- 1) Can a licensed practical nurse adjust the “CAD” pump rate if there are orders to titrate/increase the dosages every hour until the patient is comfortable? There is a triage registered nurse available for consultation. The licensed practical nurse can call the registered nurse with a review of the symptoms and adjust the dosage based on the registered nurse’s recommendation.
- 2) Can a licensed practical nurse administer a bolus if the patient has a pre-programmed pump, which allows a certain amount of medication every 15 minutes, and has a lockout of 3-4 per hour?

The Board of Nursing approved revisions to 201 KAR 20:490, LPN IV Therapy Scope of Practice, that will permit the licensed practical nurse to titrate intravenous analgesic medications for hospice patients in the future. The proposed changes in the regulation became effective September 2006. The revised regulation is posted on the KBN website.

Following discussion of the questions posed, and the statutes governing nursing practice, it was the advisory opinion of the Board that a nurse may titrate/increase medication dosages only as prescribed for the patient. A licensed practical nurse may adjust the intravenous infusion pump rate as prescribed. Following the effective date of the proposed changes to 201 KAR 20:490, the licensed practical nurse with the requisite educational preparation and current clinical competency may titrate, as prescribed, analgesic medications for hospice patients.

Patients who are receiving analgesia via a Patient Controlled Administration (PCA) system should only receive medication when the individual patient is able to self-administer/push the button. A nurse may administer a bolus dose if an order has been obtained for a "nurse activated bolus dose," but the nurse should not push the button for the patient.

#### **6. Role of Registered Nurse in the Administration of Fentanyl PCA to Intrapartum Patients in Labor**

February 2006 – A request was received for an opinion as to whether it is within the scope of practice for a registered nurse to initiate, bolus, and titrate Fentanyl PCA for an intrapartum patient in labor.

Following discussion of the question, statutes governing nursing practice, and the *Scope of Practice Determination Guidelines*, it was the advisory opinion of the Board that since the medication is being prescribed for a non-Food and Drug Administration (FDA) approved/non-indicated use, and no literature or standards of practice were found to support the safe administration of the medication by nurses, the administration of Fentanyl PCA for intrapartum patients in labor is not within the scope of registered nursing practice. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

#### **7. Role of the Registered Nurse in Withdrawing Cerebral Spinal Fluid Samples via a Lumbar Drain**

February 2006 – It was the advisory opinion of the Board that it is not within the scope of registered nursing practice to obtain a cerebral spinal fluid specimen when negative aspiration pressure is applied directly to a lumbar drain; however, the nurse may withdraw a specimen by aspiration from a port positioned below a "buretrol" type collection device that is attached to the drain. The nurse should be educationally prepared and currently clinical competent in the performance of the procedure. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

#### **8. Nurses use of Standing Orders/Protocols for the Administration, Prescribing, and Dispensing of Medications to Students in a College Health Setting**

February 2006 – A request was received for an opinion on the following questions:

- 1) A student presents with nausea and vomiting. The standing order would allow the nurse to administer one dose of Phenergan 20 mg, PO or IM depending on the severity of the symptoms. The medication would only be given after the registered nurse completes a subjective and objective assessment, ruling out conditions such as right lower quadrant pain that would need assessment by a physician. However, each year we see hundreds of cases of viral gastroenteritis, and in this instance, rather than call the physicians multiple times every day, the standing order would allow students to begin a medication to relieve their symptoms. A prescription for further doses could then be called in after consulting the physician as described above.
- 2) What about standing orders to give vaccines and TB tests? The specific vaccines we administer are MMR, Menomune or Menactra, Tetanus-diphtheria, Hepatitis A and B and, of course, Flu shots. TB tests are requested by students volunteering in settings requiring this. Again, many of these students may not have been seen by the physician as in their private practice.

- 3) A student brings in a written order from a private physician for the one-time administration of medication such as Depoprovera IM. This is an order to administer medication, yet not by the college physicians.
- 4) Our physicians think it would be fine for us to call in refills of prescription allergy medications, specifically, antihistamines such as Zyrtec, and nasal sprays such as Flonase. As long as they sign the chart the next day, would this be allowed?

Following review of the questions, statutes governing nursing practice, and the *Scope of Practice Determination Guidelines*, it was the advisory opinion of the Board that it is within the scope of registered nursing practice, for the registered nurse who possesses the requisite education and clinical competency, to perform acts as stated in question 1. The nurse should provide the patient with applicable education and advice for follow-up treatment.

It is within the scope of registered nursing practice to perform the acts as stated in question 2, using an established medical standing order/protocol and under the statutes and administrative regulations governing the administration of immunizations as issued by the Cabinet for Health and Family Services, Department of Public Health.

It is within the scope of registered nursing practice to perform the acts as stated in question 3, and not within the scope of registered nursing practice to perform the acts in question 4 unless the refill is authorized by the prescriber.

#### **9. Role of the Licensed Practical Nurse in Assisting with the Placement of Percutaneous Endoscopic Gastrostomy (PEG)**

April 2006 – It was the advisory opinion of the Board that it is within the scope of registered nursing practice for a registered nurse who is educationally prepared and clinically competent in the performance of the procedure to assist a physician in the insertion of a percutaneous endoscopic Gastrostomy (PEG) tube under the continuous, direct, and on-site supervision and direction of the physician performing the procedure. The performance of this act is not within the scope of licensed practical nursing practice.

#### **10. Administration of Cytotec (Misoprostol Tablets) to Induce Labor**

April 2006 – A request was received for an opinion on the administration of Cytotec by nurses to patients to induce labor. The request reported that the drug is "...not only not Food and Drug Administration (FDA) approved for this use but the drug manufacturer has stern warnings against this in the drug literature..." The request also posed the question as to whether or not a nurse may refuse to administer the medication as prescribed.

The Board has issued Advisory Opinion Statement (AOS) #14 entitled *Roles of Nurses in the Implementation of Patient Care Orders*. Section 5 provides information on the duty of the registered nurse to exercise independent and sound judgment based upon the nurse's individual educational preparation and experience; nurse responsibility and obligation to question an order that is deemed inappropriate by the nurse according to his/her educational preparation and clinical experience, and reference to KRS 314.021(2).

Following discussion of the questions posed, statutes governing nursing practice, the advisory opinion statement listed above, and the manufacturer's drug literature, it was the advisory opinion of the Board that nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

A nurse, who administers any medication, including a medication prescribed for non-FDA approved uses, is responsible and accountable for the components of medication administration stated in the *Kentucky Nursing Laws*, KRS 314.011(6)(c): "...Components of medication administration include, but are not limited to:

- 1) Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
- 2) Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
- 3) Intervening when emergency care is required as a result of drug therapy;
- 4) Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;

- 5) Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
- 6) Instructing an individual regarding medications.

Since the request indicated that the nurse did not have information to support the use of this drug as prescribed, the nurse could not adequately carry out the responsibilities to administer the drug in a safe manner. Subsequently, until the nurse has acquired the knowledge and skill to safely administer the drug, it is appropriate for the nurse to refuse to administer it; however, the nurse should seek out resources to assist the nurse in gaining the requisite knowledge and skill.

In addition, the facility's nursing, pharmacy and medical staffs should serve as resources in providing additional information and potential mechanisms for assisting with the resolution of your concerns. The facility should provide policies and procedures addressing the administration of medications to induce labor and patient informed consent.

In a FDA Information Sheet (1998 Update) on *Off-Label Use of Marketed Drugs, Biologics, and Medical Devices*, the FDA advises good medical practice and the best interests of the patient require that physicians use legally available drugs, biologics and devices according to their best knowledge and judgments. If physicians use a product for an indication not in the approved labeling, they have the responsibility to be well informed about the product, to base its use on firm scientific rationale and on sound medical evidence, and to maintain records of the product's use and effects. Use of a marketed product in this manner, when the intent is the "practice of medicine," does not require the submission of an Investigational New Drug Application (IND), Investigational Device Exemption (IDE) or review by an Institutional Review Board (IRB). However, the institution at which the product will be used may, under its own authority, require IRB review or other institutional oversight.

#### **11. Licensed Practical Nurse Intravenous Therapy Scope of Practice (Titration)**

April 2006 – A request was received for an opinion on whether the following acts are within the scope of licensed practical nurse intravenous therapy practice:

- 1) To "...increase, decrease or stop a Heparin drip that is on sliding scale per PTT results."
- 2) To "...start and maintain a renal dose of dopamine." This question was interpreted by the Board to mean the use of low dose dopamine to increase renal perfusion.

Following review of 201 KAR 20:490, it was the advisory opinion of the Board that the acts addressed in Questions 1 and 2 above are not within the scope of licensed practical nursing practice. The acts involve the administration of medications requiring "titration" as defined in the regulation and thus, are outside the scope of licensed practical nursing practice.

#### **12. Performance of Aspiration Biopsy of Chronic Wounds by Nurses**

April 2006 – It was the advisory opinion of the Board that the performance of an aspiration biopsy of chronic wounds is within the scope of registered nursing practice and not within the scope of licensed practical nursing practice. The registered nurse who performs this act should possess a substantial specialized knowledge base as a wound care specialist and have current clinical competency in the performance of the act. The nurse's practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice and be evidence based.

#### **13. Low Level Laser Therapy to Eliminate Smoking Addictions**

April 2006 – Information was received introducing a business which proposes to provide "low level" laser therapy to target areas of the face, ears and hands to assist persons to eliminate smoking addiction. This therapy reportedly releases endorphins which aid in curtailing the physical dependency on cigarettes. It was indicated that a nurse wished to open an office to promote a healthy lifestyle through smoking cessation and to be able to independently administer safe cold laser therapy to people who want to quit smoking.



Following discussion of the information provided, and the statutes governing nursing practice, it was the advisory opinion of the Board that a nurse's practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice and be evidence based. The Board is not aware of any scientific evidence to prove that laser therapy is beneficial for smoking cessation.

It should be assured that scientifically valid data exists which supports the validity and efficacy of this practice before you offer it to the public. Nurses are cautioned regarding making health-related claims that are not scientifically based or supported by reliable and valid research. Nurses should rely upon research findings that are based on studies that include data collection, analysis, and interpretation, and use a sound research design and not based solely on anecdotal and personal experiences and opinions of individuals. Nurses may wish to seek advice from nurse researchers in interpreting the usefulness and scientific reliability of published information.

Should evidence/literature supporting a scientific basis for this practice be available, please provide the information to the Board for consideration.

Further, nurses should be aware that KRS Chapter 367, *The Kentucky Consumer Protection Act*, prohibits the making of commercial claims that are fraudulent or deceptive.

The *Kentucky Nursing Laws* (KRS Chapter 314) do not prohibit a nurse from operating a retail enterprise. The nurse is accountable and responsible for utilizing his/her nursing knowledge, judgment, and skill, and providing health-related practices with reasonable skill and safety. The nurse, in providing nursing services, is responsible and accountable for assuring that the client or legal guardian is provided with sufficient information about the proposed modalities in order for the client to give informed consent as needed.

#### **14. Role of the Licensed Practical Nurse in Training Unlicensed School Personnel to Perform Delegated Acts**

June 2006 – A request was received for an opinion on the role of the licensed practical nurse in training unlicensed school personnel to perform delegated acts such as the administration of emergency drugs to students on field trips.

Even though KRS 314.011(10)(d) permits a licensed practical nurse to teach, supervise, and delegate, KRS 158.838 and 156.502 governing health services in school settings limit these activities as it applies to delegating and training school employees in the performance of health services. Under these statutes a school employee is delegated responsibility to perform the health service by a physician, advanced registered nurse practitioner or registered nurse. The school employee who is delegated a task is trained by the delegating physician, advanced registered nurse practitioner, or registered nurse.

#### **15. Administration of Versed (Midazolam) via an Intranasal Route in School Settings**

June 2006 – A request was received for an opinion on the administration of Versed (midazolam) via an intranasal route in school settings; if a nurse can refuse to administer this medication, and if the nurse may delegate its administration to unlicensed personnel.

Following discussion of the questions posed, review of the statutes governing nursing practice, and the manufacturer's drug literature, it was the advisory opinion of the Board that nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

A nurse, who administers any medication including a medication prescribed for non-FDA approved uses (such as Intranasal Versed), is responsible and accountable for the components of medication administration stated in the *Kentucky Nursing Laws*, KRS 314.011(6)(c) as follows: "...Components of medication administration include, but are not limited to:

- 1) Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
- 2) Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
- 3) Intervening when emergency care is required as a result of drug therapy;
- 4) Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;

- 5) Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
- 6) Instructing an individual regarding medications.

A nurse, who does not have the knowledge, skill, or requisite information to support the use of a prescribed medication, cannot adequately carry out his/her responsibilities to administer the medication in a safe manner. Subsequently, the nurse should refuse to administer the medication; however, the nurse should seek out resources to gain the requisite knowledge and skill for potential future practice. The prescriber should be notified of the situation as well.

The Board has issued Advisory Opinion Statement (AOS) #14 entitled *Roles of Nurses in the Implementation of Patient Care Orders*. Section 5 provides information on the duty of the registered nurse to exercise independent and sound judgment based upon the nurse's individual educational preparation and experience; nurse responsibility and obligation to question an order that is deemed inappropriate by the nurse according to his/her educational preparation and clinical experience, and reference to KRS 314.021(2).

KRS 314.021(2) holds all nurses individually responsible and accountable for his/her acts based upon the nurse's education and experience. Each nurse must exercise professional and prudent judgment in determining whether the performance of a given act is within the scope of practice for which the nurse is both licensed and clinically competent to perform. The Kentucky Board of Nursing has published *Scope of Practice Determination Guidelines* that contains a decision tree chart providing guidance to nurses in determining whether a selected act is within an individual nurse's scope of practice.

A school system should determine, in an established written policy and procedure, the drugs that may be administered in a school setting. This determination should be based upon, but not limited to, the training and skill of the nurse, resources available, access to emergency medical services and other interventions that could be instituted.

Intranasal Versed for control of seizures is being prescribed for a non-FDA approved use. In a FDA Information Sheet (1998 Update) on *Off-Label Use of Marketed Drugs, Biologics, and Medical Devices*, the FDA advises: Good medical practice and the best interests of the patient require that physicians use legally available drugs, biologics and devices according to their best knowledge and judgments. If physicians use a product for an indication not in the approved labeling, they have the responsibility to be well informed about the product, to base its use on firm scientific rationale and on sound medical evidence, and to maintain records of the product's use and effects. Use of a marketed product in this manner, when the intent is the "practice of medicine," does not require the submission of an Investigational New Drug Application (IND), Investigational Device Exemption (IDE) or review by an Institutional Review Board (IRB). However, the institution at which the product will be used may, under its own authority, require IRB review or other institutional oversight.

The Practice Committee deferred issuing a recommendation to the Board regarding the delegation of Intranasal Versed administration to unlicensed personnel at this time.

#### **16. Wound Care Treatment by Registered Nurses Using the Anodyne® Therapy Professional System 480**

June 2006 – A request was received for an opinion as to whether wound care treatment, as prescribed, using the *Anodyne® Therapy Professional System 480*, is within the scope of registered nursing practice. The *Anodyne® Therapy Professional System 480* was described as a non-invasive, drug-free device that delivers Monochromatic InfraRed Energy (MIRE) through infrared light-emitting diodes, with a wave length of 890nm that is mounted in flexible therapy pads.

Following discussion of the question posed, statutes governing nursing practice, and the *Scope of Practice Determination Guidelines*, it was the advisory opinion of the Board that the performance of *Anodyne® Therapy*, as described above for wound care, is within the scope of registered nursing practice when the nurse possesses the educational preparation and current clinical skills to perform the therapy in a safe and effective manner. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

The use of *Anodyne® Therapy* for treatment of wounds is being prescribed for a non-FDA approved use. In a FDA Information Sheet (1998 Update) on *Off-Label Use of Marketed Drugs, Biologics and Medical Devices*, the FDA advises: Good medical practice and the best interests of the patient require that physicians use legally available drugs, biologics and devices according to their best knowledge and judgments. If physicians use a product for an indication not in the approved labeling, they have the responsibility to be well informed about the product, to base its use on firm scientific rationale and on sound medical evidence, and to maintain records of the product's use and effects. Use of a marketed product in this manner, when the intent is the "practice of medicine," does not require the submission of an Investigational New Drug Application (IND), Investigational Device Exemption (IDE) or review by an Institutional Review Board (IRB). However, the institution at which the product will be used may, under its own authority, require IRB review or other institutional oversight.

#### **17. Use of Cosmetic Lasers by Nurses**

June 2006 – A request was received for an opinion on the performance of cosmetic laser procedures by nurses. Specifically, if it is within the scope of nursing practice for a nurse to use cosmetic lasers such as a "Gemini" using 532nm and 1064nm wavelengths and a "Venus" laser for skin peels which involve ablation and removal of the superficial layer of the skin. It was that cosmetic laser therapy may also be prescribed for acne treatments, hair reduction, skin rejuvenation, and vascular, pigmented lesion and rosacea treatments.

Following discussion of the question posed, statutes governing nursing practice, and *Scope of Practice Determination Guidelines*, it was the advisory opinion of the Board that the performance of cosmetic laser procedures, as prescribed, is within the scope of both registered nursing practice and licensed practical nursing practice. The nurse must possess the educational preparation and current clinical competency to perform the acts in a safe and effective manner. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidenced based.

#### **18. Degree of Supervision Needed by Nurses Who Perform Cosmetic Laser Treatments**

June 2006 – A request was received for an opinion on the level of physician supervision needed when registered nurses and licensed practical nurses provide laser treatments. The Board discussed the questions posed and referred individuals to:

- The Kentucky Board of Medical Licensure for its position statement on the role of the physician in supervision of laser-related activities.
- The Dermatology Nurses' Association position paper entitled *The Nurse's Role in Laser Procedures* which advises that "...nurses will deliver laser light under the direct supervision of the physician who is on-site, utilizing established protocols that have been determined by the physician at the time of his/her consultation with the patient, or at each pre-treatment session when applicable.
- The American Society for Laser Medicine and Surgery's *Policy for Use of Laser and Related Technology by the Non-Physician* which states that "...a properly trained and licensed medical professional may carry out these specifically designed procedures only under direct, onsite physician supervision.

#### **19. Advisory Opinion Request on Advanced Registered Nurse Practitioner Scope of Practice (Laser Technology)**

April 2006 – A request was received for an opinion on whether it is within the scope of advanced registered nursing practice "...to evaluate, diagnose, and treat patients with therapeutic interventions that include removal of hair and facial and leg veins using laser technology, performance of skin enhancement procedures, and prescribing of non-controlled substances...without the supervision or authorization of a physician."

Following discussion of the questions posed, statutes governing nursing practice, administrative regulation 201 KAR 20:057 governing advanced registered nursing practice, and the KBN *Scope of Practice Determination Guidelines*, it was the advisory opinion of the Board that the acts stated above are within the scope of advanced registered nursing practice. The advanced registered nurse practitioner (ARNP) who performs these acts must possess the educational preparation and current clinical competency to perform the acts in a safe manner, and be in compliance with 201 KAR 20:057 Section 3 that states, in part: "In the performance of advanced registered nursing practice, the advanced registered nurse practitioner shall ...seek consultation or referral in those situations outside the advanced registered nurse practitioner's scope of practice."

## **20. Role of the Women's Health Advanced Registered Nurse Practitioner in Male Urology Care**

April 2006 – An inquiry requested information on the expansion of practice for an advanced registered nurse practitioner certified in women's health care to provide urology services to men after obtaining a "urology advanced practice" certification issued by the Society of Urologic Nurses and Associates.

Following discussion of the question, statutes governing nursing practice, and 201 KAR 20:056 and 201 KAR 20:057 governing advanced registered nurse practitioner registration and practice, the Board provided information that the advanced registered nurse practitioner certified in women's health care would need to complete academic educational preparation, and hold certification as an adult or family nurse practitioner, prior to providing advanced registered nursing practice to men with urological conditions. After obtaining this educational preparation and certification, the individual may then also certify in the subspecialty area of urological practice.

## **21. Proposed Amendments to 907 KAR 1:145 Supports for Community Living Services for an Individual with Mental Retardation or a Developmental Disability**

June 2006 – Following review of proposed changes to administrative regulation 907 KAR 1:145, Supports for community living services for an individual with mental retardation or a developmental disability, the Board of Nursing advised the following:

- 1) Section 3(16)(h) and Section 3 (18)(e) —The administration of medication is a nursing function KRS 314.011(6)(c). The approval of any course that would purport to teach unlicensed individuals to administer medication must be the responsibility of the Board of Nursing. Furthermore, such administration shall take place only under the delegation of a nurse and done in a manner consistent with the Board of Nursing's administrative regulation on delegation [KRS 314.011(2) and 201 KAR 20:400]. An unlicensed person may not administer medications independently, but only under the supervision and delegation of a nurse.
- 2) Section 4(2)(k)6.k—Medication management is a nursing function and must be under the supervision of a nurse.
- 3) Section 5—Since medication administration is a nursing function, incidents involving medication errors must be reported to the supervising nurse.

## **22. 2006 Article: "The Good Samaritan Law—A Nurse's Responsibility to Act in an Emergency" P. Pabon, JD, KBN Prosecuting Attorney**

The Board of Nursing has received numerous inquiries over the years regarding a nurse's responsibility to act in an emergency situation. Many times the question is whether a nurse would be held civilly liable for refusing assistance in an emergency or possibly for rendering aid. The question becomes more complex when a nurse acts in an emergency to assist a patient when there is no physician order in place for the administration of a medication that may save the patient's life.

Kentucky's *Good Samaritan Law* states in KRS 411.148 that a nurse, among others, shall not be liable for civil damages when administering emergency care at the scene of an emergency when done for no remuneration. However, the Office of the Attorney General has questioned the constitutionality of this law under the Kentucky Constitution and it would appear that this statute would not apply to a nurse who is being paid and acts while on duty. (See OAG 79-535)

The *Kentucky Nursing Laws*, Chapter 314.101 states: "*This chapter does not prohibit the furnishing of nursing assistance in an emergency....*" That being said, nurses do not have the authority to independently prescribe medications, or to administer prescription medications without a valid medical order issued by a prescriber. The Board of Nursing has an advisory opinion statement (AOS #14) that addresses a nurse's implementation of medical orders. A nurse may be held accountable and incur disciplinary action if the nurse administers medications without a valid medical order.

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In addressing the issue regarding the administration of medications without a physician's order, the Board of Nursing requested an opinion of the Attorney General in 1979. Specifically, the question regarded the legality of nurses carrying out orders conveyed by someone other than a licensed physician or dentist and whether there is a difference if the situation is one of emergency. This opinion states in part: "...In an emergency situation, a registered nurse or licensed practical nurse may take any procedures which the nurse is trained to perform to save the life of a patient without the necessity of having a physician's or dentist's order. Of course, the nurse will be judged by the factual situation—that is, is it a true emergency, does she have time to contact a physician or dentist, and is she trained to perform the procedure she seeks to perform"? (See OAG-79-506)

Common law principles provide that there is no affirmative responsibility to act in an emergency situation. However, there may be a clearly defined relationship between the parties that may impose obligations that would not otherwise exist. In some instances, failure to render assistance may lead to liability if the injury is aggravated through inaction. On the other hand, if a nurse chooses to act in an emergency, the nurse may be held civilly liable for any negligence. Nurses would be well advised to follow any employer or facility policy or established protocol on how to render aid in an emergency situation. In addition, the nurse must adhere to current standards of nursing practice and may be held accountable for actions that are negligent or inconsistent with the practice of nursing.

This article, while addressing the *Kentucky Nursing Laws*, does not purport to be formal legal advice. The Board encourages nurses to seek advice from an attorney when confronted with civil liability issues. Nurses may also want to review their malpractice insurance to determine whether their policy covers emergency care situations.

**All advisory opinion statements may be obtained from the Board office or from the KBN website at <http://kbn.ky.gov>.**

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